1950.

File No. S.Bij. 4/50.

Legal DEPARTMENT

A. BRANCH

Subject:— Civil Suit No. 258 of 1949.

Ramchandra Hanmanta Mangoli

V/s.

The Province of Bombay.

For damages of Rs. 1000 for detention from 5th Feb. 1948 to 4th March 1948 under the Bombay Public Security Measures Act, 1947 or in the alternative Rs. 200 as damages for detention from 9 am to 11 p.m. on 5th Feb. 48.

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File No. S.Bij 4/50

Std. Scott. Slip 24 A—1626—1,00,000—6-49

S.Bij 4/5

C O N T E N T S.

Legal Department File No. S.Bij. 4/50

Sr.No.	R.I./O.No.	Subject	Pages.
		Suits Bijapur. C.S. No. 258/1949. R. H. Mangoli v/s. The Province of B'bay. For damages of Rs. 1,000 for detention from 5th Feb. 1948 to 4th March 1948, or in the alternative Rs. 200 as damages for detention from 9 a.m. to 11 p.m. on the 5th Feb. 1948	1-44.

Th[illegible] the [illegible] of the [illegible] Order in respect of Civil Suit No. 258/1949 in the Court of the Civil Judge, Senior Division Bijapur.

Papers to be sent with the Plaint of the Department

(i)	The number of the suit.	C.S.No. 258 of 1949.
(ii)	The date on which and the Court in which it was instituted.	On 27-5-1949 in the Court of the Civil Judge, Senior D., Bijapur.
(iii)	The names of the parties.	D. Ramachandra Pai Agent of Bank of Baroda, Bijapur. Vs. 1. The Secretary of State.
(iv)	The date fixed by the Court for first hearing.	11-10-1949.
(v)	Whether notice of action has been given under Sec. 80 C.P.C. and if so, the date of delivering of such notice.	Yes. 4-8-1948.

The following papers should be sent along with the report:-

(a)	Copy of the plaint in the original language together with copies of any documents or list of documents annexed to the plaint.	The plaint is already in English. It is at pages 55 to 57 of file I. No documents have been annexed to the plaint.
	In cases where the plaint is in English type-written in half margin.	Does not arise.
(b)	A full & signed statement:-	
	(i) of the circumstances which led to the suit.	The plaintiff was ordered to be detained under section 2(1)(a) of the Bombay Public Security Measures Act (Act VI of 1947) on 5-8-1948 as he was then declared by Government of Bombay as unlawful association under the Criminal Law Amendment Act. This is the cause of the suit.
	(ii) of the course which it is proposed to adopt, namely whether to defend the suit and of the reasons for the same; and.	According to section 34 of the Bombay Public Security Measures Act, no suit can lie. The suit is to be defended.
	(iii) If it is proposed to defend the suit, the grounds on which it is proposed to base the defence and of the evidence to be adduced.	The suit can be defended on the grounds proposed by the District Government Pleader, Bijapur in his No. 284 of 19-4-1949. (Page 29 File I)
(d)	If the case turns on documentary evidence copies of the documents (or original) relied on by the plaintiff.	No documentary evidence relied on by the plaintiff.

7 was an active member of R.S.S., which

(e)	All the correspondence and written proceedings whether in English or in any regional language connected with the subject matter of the suit together with translation in English of all important papers which are in the regional language.	All the papers are in english. File I containing these papers is enclosed,
(f)	A statement in english consisting of a brief description of all the documents referred to in clauses (d) and (e) above which are in regional language.	There are no such documents. However, as regards brief history of the case, D.S.P's letters No. C. 115 of 3-2-1948, C.117 of 5-3-1948 and C/303 of 12-4-1948 and the grounds framed by the D.M. which are in fil. I, may be perused.

Bijapur,
29-9-1948.

For Dist. Magistrate Bijapur.

5

Civil Suit No. 258 of 1949.

In the court of the Civil Judge, Senior Dn., Bijapur.

[illegible] Plaintiff.
41, Muslim, Hawker of Bijapur.

Vs.

1. The Province of Bombay. Defendant.

Claim Rs. 5000/-

Herein the plaintiff respectfully begs to state as under:-

1. The plaintiff was arrested by the Bijapur Police about 9 A.M. on 8-8-1948 by one Mr. [illegible] and produced before the District Magistrate of Bijapur and remanded to him till the same night at about 11 P.M., the order which was passed at 4 P.M. on 8-8-1948 was under Sec. 2(1)(c) of the Bombay Public Security Measures Act (Act No. VII of 1947), the ground of the order was that the plaintiff [illegible] that the plaintiff was [illegible] a dangerous man and [illegible] to the public safety of the locality of Bijapur. The copy of the grounds supplied to the plaintiff under the Act reported also that further [illegible] with the plaintiff [illegible] enquiries as were necessary and getting such [illegible] from him that the plaintiff was connected with the R.S.S. or any other [illegible] or semi-military organization.

A representation by the plaintiff against the said order was duly filed on 9-8-1948, but no facilities were given to him to sign the same till 2-9-1947, but no facilities were given to him to sign the same till 2-9-1948 and no reply to it was sent to him, till 2-9-1948, He was ultimately released on 4-9-1948 after taking from him an undertaking that he would not associate with the R.S.S. or any other such organization.

Answer to para 3 of 1

The District Magistrate had issued orders after satisfying himself that the plaintiff was an active member of R.S.S. [illegible]

The plaintiff was thus detained in the Bijapur District Prison for one month. He maintains that the grounds of the detention are totally false, and there was not have been any material on which the D.M. could have said to have been satisfied. The material if any have been got by any enquiry that could not have satisfied the best of independent enquiry. The D.M. failed to apply his mind to the case. He did

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...nor ever care to verify the ... before it, or properly ... else it, and therefore ... not really and honestly satisfied ... and unreasonable detention are ... and void in all respects.

(4) The plaintiff's petition ... position to make the said ... and asserted, if it is a Govt ... servant who did it in the ... discharge of his duty the ... Government will be liable or ... that account, but that if he ... through malice only he alone ... for it and that person, and ... thus cause loss to the plaintiff ... by preventing him from ... against him.

obtain ... the D.S.P. ... by making ... fictitious entries and ... it was not binding on the ... D.S., to falsify the ... of the ... officer ... in the interest of public ...

(5) The said case, the plaintiff's ... from ... on ... 6-2-1943 ... finally adjudication, ... upon that time there is no ... warrant of arrest or order against ... him. The defendant has also caused ... loss to plaintiff by unreasonable ... delay in attending to his ... representations and preventing him ... to ... in the High ... Court.

... the Defendant ... ... on page ... of the said Proceedings, ... the first point, on receipt ... of his representation the ... order was revoked on 6-3-48 after making necessary ... enquiries. No time limit ... is specified in section 4 ... of the Bombay Public ... Security Measures Act to ... pass orders of suppression ... but ... ... to pass ... order under the said ... section is purely ... discretionary. It is quite ... open to him to approach ... High Court at any time ... after ... ... communicated to him.

... Government of India ... in view of section 24 of ... the Bombay Public Security ... Measures Act.

(6) It was on this representation ... that the D.M. was ultimately ... satisfied that the grounds of ... detention did not exist and hence ... his detention from 10-2-1942 at ... least was unreasonable and the ... D.M's conduct in ... it was ... malicious. If the ... certificate caused ... of his duties as such ... hence the defendant is liable or ... all or any of the grounds in ... regard to ...

(7) The plaintiff has thereby ... suffered ... financially ... financially and in respect ... ient professional income ... for ... month and ... from all the ... of an Assistant Judge, for which ... he was eligible ... respects.

(8) He therefore claims the ... following ...

"(a) Rs. 1,000/- ... detention from ... 9 ... on 5-2-1943 to 4-3-43 ... or thereabouts.

9 12

(b) Rs.200/- for damages from 9-1-1948 to 11-1-1948

(9) The cause of action arose on 5-8-1948 and continued up to 4-3-1948.

(10) The valuation of this suit for court fees jurisdiction and pleader's fees is Rs. 2000/-

(11) The cause of action and the damages incurred fors within the jurisdiction of this court.

(12) The notice required by sec. 80 C.P.C. has been duly served on the defendant and other formalities have been duly complied with.

(13) The last act complained of in this suit was on 4-5-1949 and this suit having been filed from 4-5-1949 to 29-5-1949 this suit filed today is in time.

(14) The plaintiff prays for a decree that the defendant be ordered to pay the plaintiff Rs.1200/- with costs and future interest.

No writ can lies in view of section 7 of the Bombay Public Security Measures Act against Government.

Bijapur.
30-5-1949

Sd/-
Plaintiff.

I, Ramachandra Hemant Pandit, the plaintiff above named hereby solemny affirm that what is stated above is true to the best of my knowledge and belief.

Sd/-x-x-
Pleader.

Bijapur
29-9-49

Sd/- [illegible]
for Dist. Magistrate Bijapur.

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Legal Department.

The plaintiff who is a pleader of Bijapur was arrested and detained under section 2(1)(a) of the Bombay Public Security Measures Act, 1947, because he was reported to be an active worker of the Rashtriya Swayam Sevak Sangh. After he had given his representation under section 3, and after the District Magistrate had made further inquiries, the plaintiff was set at liberty a month after his arrest. He has now filed this suit, for damages against the Provincial Government on the ground that the District Magistrate's order was not bona fide and he had not applied his mind to the material before him. The suit is defensible on the grounds stated in the brief. Recent rulings on the subject have been quoted in the brief.

The defence of the suit may be sanctioned on the lines of the accompanying brief.

RW 15/12/48

R.

RLA If I remember right Liversidge v Anderson was also a Civil case. We might cite and depend upon that or other English Cases

A 15/12

RLA The R.L.A's impression is correct: Liversidge v. Anderson is also an authority for the statement of law at 'A' in para 3 of the grounds of defence. But as not cases was considered under Bombay cases I did not refer to it. The citation is now added.

R 19/12

IN THE COURT OF THE CIVIL JUDGE,

SENIOR DIVISION,BIAJPUR.

CIVIL SUIT No.258 of 1949.

1. Ramchandra Hanmanta Mangoli
41, Brahmin, Pleader of
Bijapur. .. Plaintiff.

v.

1. The Province of Bombay .. Defendant.

Following is the written statement of the Defendant - the Province of Bombay.

2. The allegations in paragraph 1 of the plaint are substantially correct. With regard to the concluding sentence of that paragraph it is submitted that the plaintiff was supplied with clear, precise and accurate grounds for his detention and that they did not require any further clarification.

3. With regard to the allegations in paragraph 2 of the plaint it is submitted that the plaintiff was released under section 4 of the Bombay Public Security Measures Act as soon as such inquiries as were necessary were made and after he had given an undertaking that he would not associate himself with the activities of the Rashtriya Swayam Sevak Sangh or any other communal or semi-military organization which is disposed to resort to violence and preaching of communal hatred and violence.

4. The allegations in paragraph 3 of the plaint are not correct and are hereby denied. The defendant submits that the District Magistrate's order detaining the plaintiff was a valid and bonafide order passed in exercise of the powers under section 2(1)(a) of the Bombay Public Security

Measures Act delegated to him under section 21 thereof. The order is prima facie a valid order and it is not, therefore, open to the Civil Court to go behind the order and consider whether the materials on which it was passed were adequate or not. The allegation that the District Magistrate failed to apply his mind to the case and that he was not bona fide satisfied is incorrect and is hereby denied.

5. Assuming ~~khak~~ without admitting that the District Magistrate's order was malafide and not valid, the defendant submits that the plaintiff is not entitled to claim any damages from the Provincial Government. The Defendant further submits that in ordering the plaintiff's detention the District Magistrate was not acting in obedience to any order or a command from the Provincial Government, but was merely performing his duty imposed upon him by law. It is, therefore, submitted that the Government is not liable to the plaintiff for damages.

6. The allegations in paragraph 4 of the plaint are misconceived. Government was not under any obligation to disclose to the plaintiff the source of information received against the plaintiff.

7. The allegations in paragraph 5 of the plaint that the plaintiff's detention from 9 a.m. to 11 p.m. on 5th February 1948 was unjustified is also not correct and is hereby denied. It is also denied that the defendant caused loss to the plaintiff by inordinate delay in replying to his representation. As soon as the plaintiff's representation was received inquiries were made and the order was annulled on 4th March 1948. It was open to the plaintiff to approach the High Court at any time before his release, after his

the grounds of his detention were communicated to him. The plaintiff cannot blame the Provincial Government for his failure to apply to the High Court.

8. The plaintiff's allegations against the District Magistrate's conduct made in paragraph 6 of the plaint are false and scandalous and are hereby denied. The allegation that the defendant is also liable on all or any of the grounds mentioned in paragraphs 3 to 6 of the plaint is also incorrect and hereby denied.

9. The amount of damages claimed by the plaintiff is excessive and highly exaggerated and is hereby denied. The plaintiff is not entitled to recover penuniary damage for mental suffering.

It is, therefore, submitted that the suit fails and may be dismissed with costs.

District Government Pleader,

I District Government Pleader, do hereby declare that what is stated in paragraphs 1 to 9 above is true according to the information received and believed to be true. This verification is made at dated the day of 19

District Government Pleader,

Suits :
Bijapur.

For damages of Rs. 1,000 for detention from 5th February 1948 to 4th March 1948 under the Bombay Public Security Measures Act, 1947, or in the alternative Rs. 200 as damages for detention from 9 a.m. to 11 p.m. on 5th February 1948.

GOVERNMENT OF BOMBAY.

LEGAL DEPARTMENT.

Resolution No. 66.

Bombay Castle, 4th January 1950.

Letter from the Collector of Bijapur, No. LAW 195, dated the 5th October 1949—

IN THE COURT OF THE CIVIL JUDGE (SENIOR DIVISION), BIJAPUR.

Civil Suit No. 258 of 1949.

Ramchandra Hanmanta Mangoli ... ... Plaintiff;

versus

The Province of Bombay ... ... Defendant.

Forwarding the papers in the suit noted in the margin and requesting sanction to its defence.

Memorandum to the District Government Pleader, Bijapur, No. 15156, dated the 28th December 1949—Forwarding a copy of the brief with its accompaniments in advance.

RESOLUTION.—Sanction is accorded to the defence of the suit on the lines of the accompanying brief.

By order of the Governor of Bombay,

original

P. M. LAD,
Secretary to Government.

G. R., No. 66, L. D., dated the 4th January 1950.

To

* The Home Department,
* The Collector of Bijapur,
The District Government Pleader, Bijapur (with two copies of the brief).

* With a copy of the brief.

No. of 1950.

Copy forwarded for information and guidance to

Issued 1/3/50

Submitted after issue
File in S. Bijapur/50 (new)

BIJAPUR CIVIL SUIT NO. 258 OF 1949.

Chronological Statement of Facts.

The plaintiff claims from Government Rs. 1,000 as damages for his detention from 5th February 1948 to 4th March 1948 under the Bombay Public Security Measures Act, 1947, or in the alternative Rs 200 as damages for his detention from 9 a.m. to 11 p.m. on 5th February 1948.

2. The plaintiff was reported to be a member of the Rashtriya Swayam Sevak Sangh at Bijapur which had been declared to be an unlawful organization under the Criminal Law Amendment Act. At 9 a.m. on 5th February 1948 he was arrested under the orders of the District Superintendent of Police, Bijapur. At 11 p.m. on the same day he was served with an order of detention No. P.S.M. 40, dated 5th February 1948, passed by the District Magistrate, Bijapur, under clause (*a*) of sub-section (*1*) of section 2 of the Bombay Public Security Measures Act, 1947. On the same day he was supplied with another order under section 3 stating the grounds of his detention and calling upon him, if he wished, to make a representation to the District Magistrate through the Superintendent, District Prison, Bijapur.

3. On 6th February 1949, the plaintiff made a representation to the District Magistrate stating *inter alia* that he had no connection with the R. S. S., that he was not at all its active worker, that he was a practising pleader and had not taken any part in any communal activities and praying that he may be set at liberty. On 3rd March 1948 he gave an undertaking intimating that he would not associate himself with the activities of the R. S. S. or any other communal and semi-military organization disposed to resort to violence and preaching communal hatred and violence.

4. Thereupon, by another order No. P.S.M. 40, dated 4th March 1948, passed under section 4 of the Act, the District Magistrate annulled the previous order of detention and directed that the plaintiff be released.

5. On 1st March 1949 the plaintiff gave notice of suit under section 80 of the Civil Procedure Code and on 30th May 1949 he filed the suit in the Court of the Civil Judge, Senior Division, Bijapur.

Grounds of Defence.

The plaintiff contends that the grounds of his detention were totally false, that there could not have been any material on which the District Magistrate could have been satisfied, that the material, if any, must have been so scanty and flimsy that it could not have stood the test of independent inquiry, that the District Magistrate failed to apply his mind to the case, that he was, therefore, not really satisfied and that the order of detention was, therefore, *malafide* and without jurisdiction.

2. Now the order against which the plaintiff complains was passed by the District Magistrate in exercise of the powers under sub-section (*1*) (*a*) of section 2 of the Bombay Public Security Measures Act, 1947, delegated to him by Government under section 21 thereof. The suit is, however, filed against Government of the Province of Bombay. The question whether the District Magistrate's order was a valid and *bona fide* order or not will be considered presently. But so far as the Provincial Government is concerned it should be contended

that even assuming the order to be invalid or *malafide*, the plaint discloses no cause of action against Government. It is settled law that where the duty to be performed is imposed by law and not by the will of the party employing the agent, the employer is not liable for the wrong done by the agent in such employment. (Nireaha Tamaki *v.* Baker, 1901 A.C. pp. 561-576; Shiv Bhajan *v.* Secretary of State, I.L.R. 28 Bom. 314-325; Meherwanjee N. Cama *v.* Secretary of State, 14 B.L.R. 654-674). In this case, in ordering the plaintiff's arrest and detention under the Bombay Public Security Measures Act, the District Magistrate was not acting in obedience to a command or order from Government but in the supposed performance of the duty imposed upon him by an Act of the Bombay Legislature. In such a case the maxim *Respondeat Superior* does not apply so that even if the District Magistrate's order was not in good faith, the Provincial Government would not be liable.

3. As to the question of absence of good faith, the plaintiff has made a dogmatic assertion that the District Magistrate had failed to apply his mind and, therefore, his order was *malafide*. The assertion is made on the supposition that the material before the District Magistrate must have been so scanty and flimsy that it could not have stood the test of an independent inquiry and would not have led to the satisfaction in the sense required by section 2. Now the order in question which was passed under clause (*a*) of sub-section (*1*) of section 2 of the Bombay Public Security Measures Act states that the District Magistrate was satisfied that the plaintiff was an active worker of the Rashtriya Swayam Sevak Sangh at Bijapur and was acting in a manner prejudicial to the public safety of the inhabitants of the Bijapur City within his jurisdiction. On the same day the District Magistrate communicated to him in writing the grounds on which the order was made as required by section 3. The grounds furnished to him were clear, precise and accurate and made it clear to the plaintiff what he was charged with and what had moved the District Magistrate to deprive him of his liberty. On receipt of those grounds the plaintiff made his representation on consideration of which and after making further inquiries the District Magistrate ordered his release under section 4 on 4th March 1948. The record shows that the procedure prescribed by law was correctly followed. The order of detention falls clearly under section 2(*1*)(*a*) and is *ex-facie* a good and a valid order. It is also regular in point of form and, therefore, the burden is upon the plaintiff to show that it was not passed in good faith. (Liversidge *v.* Anderson, 1942 A.C. 206; Hinji *v.* the Commissioner of Police, 50 B.L.R. 210). It is true that in the latter case of Moinuddin Korieshi 50 B.L.R. 579, it was held that even when the order of detention is *ex-facie* a good order, it is competent to the Court in suitable cases to go behind it and inquire into the truth of the information on which the detaining authority has acted, if a fact relied on is found to be false and the authority by applying his mind to the material before him could have found out the falsity of the fact. The practical effect of this decision is that the detention order is bad and must be set aside and the detenue released. But that does not give to the detenue a cause of action in a Civil Court for damages when the order itself is passed *bona fide*. Moinuddin's case is, therefore, not applicable and cannot support the plaintiff's claim for damages. Assuming for the moment that the facts relied on in the order of detention were not true, it is for the plaintiff to show that the District Magistrate could have found out the falsity of the facts from the material placed before him at the date when he made the order of detention. The plaintiff's chief grievance is that

the material before the District Magistrate must have been too scanty to lead to the satisfaction required by section 2. But if the order asserts the existence of a state of mind and belief which satisfies the requirements of section 2, the Court cannot go behind the order and consider the adequacy or otherwise of the reasons which go to establish the state of the mind. (Hirji *v.* the Commissioner of Police, 50 B.L.R. 210). The claim for damages is, therefore, not maintainable and since the order was passed in good faith the suit would be barred under section 24 of the Bombay Public Security Measures Act, even if the plaintiff amends the plaint by impleading the District Magistrate as a defendant.

4. In paragraph 4 of the plaint it is contended that the name of the person who supplied the information against the plaintiff was not disclosed to him and he was thus prevented from seeking redress against that person. But as held in Rajdhar's case (50 B.L.R. 183) Government is not bound to disclose facts which it considers to be against public interest to disclose. Government is given the discretion to disclose only such particulars as are in its opinion sufficient to enable the detenue to make a representation to Government. There is nothing in the Act which entitles the detenue to be supplied with the source of the information received by Government against him.

5. The plaintiff has, in the alternative, contended that in any case his detention from 9 a.m. to 11 p.m. on 5th February 1948 was totally unjustified as up to that time there was no warrant of arrest nor was there any order of detention against him. It is true that the detention order was served upon the plaintiff 14 hours after he had been arrested by the police. But the contention that his detention during that period of 14 hours was wrong is not correct. Under section 151 of the Criminal Procedure Code a Police Officer knowing of a design to commit any cognizable offence may arrest without orders from a District Magistrate and without a warrant detain the person so designing if it appears to such officer that the commission of the offence cannot otherwise be prevented. The plaintiff was reported to be a member and active worker of the Rashtriya Swayam Sevak Sangh which was declared to be an unlawful association under the Criminal Law (Amendment) Act, and his arrest can, therefore, be justified under section 151. Even if his detention during that period of 14 hours was unlawful still the Provincial Government cannot be held responsible on the ground that in making his arrest the Police Officer concerned was performing a duty imposed upon him by the Statute and was not acting in obedience to any order of Government. The plaintiff's detention during that period can also be justified on the strength of the decision in Anvarl Begum *v.* the Police Commissioner (50 B.L.R. 593). In that case it was held that there was nothing in the terms of section 2 (*1*) which prescribes that the order for detention should be in writing. In other words, even an oral order can be passed by the detaining authority after taking into account all the circumstances of the case which go to satisfy him that the detenue is acting in the manner prescribed by the section before a valid detention order can be made against him.

For the above reasons, therefore, it should be urged that the suit against the Provincial Government fails and must be dismissed with costs.

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S Bijapur - 15°
(Arundale)
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Civil Suit No. 258 of 1949.

Issues.

1. Whether the District Magistrate's order detaining the plaintiff was a valid and bona fide order passed in exercise of powers under section 2(1)(a) of the Bombay Public Security Measures Act delegated under section 21 thereof ?
2. If so, whether it is open to the Civil Court to go behind the order and to decide the question whether the materials on which it was passed were adequate or not ?
3. Whether the District Magistrate failed to apply his mind to the case and whether there are materials to show that he did not act bona fide ?
4. Whether the Government is accountable ?
5. Whether the defendant was illegally detained ?
6. Whether detention from 9 A.M. to 11 A.M. on 5-2-1948 was illegal and not according to law ?
7. Whether the Government was under an obligation to disclose the name of the informant ?
8. Whether the Government failed in its duty in not disclosing his name to the defendant ?
9. Whether the suit is tenable ?
10. Whether the defendant is entitled to damages ?
11. If so, whether a sum of Rs.1,200 should be awarded to the plaintiff as compensation ?
12. What orders ?

No further issue is sought.

June 22,1950. Sd A.C.Sequeira.

Civil Judge, Sr. Dn., Bijapur.

" True Copy "

Dist. Govt.Pleader, Bijapur.

Civil Suit No. 258 of 1949

In the Court of the Civil Judge, Sr. Dn., Bijapur.
At Bijapur.

1. R. H. Managoli - Plaintiff

Vs.

1. The Province of Bombay.

The defendant files the following objections to Exhibit No. 12 calling upon him to produce the documents:-

1. Documents Nos. 2 to 8 are privileged documents and so they cannot be produced.

2. Besides these documents Nos. 2 to 8 are irrelevent so far as the plaintiff's suit is concerned.

3. Documents No. 6 to 8 cannot be produced as no specification of particular documents is mentioned.

4. The plaintiff is not entitled under the law to call for the documents in the way he has done.

It is therefore prayed that the application be rejected with costs.

Date:-

District Government Pleader, Bijapur.

P.H.R.
15/7

Civil Suit No.258 of 1949.

In the Court of the Civil Judge, Senior Division, Bijapur.

1. R.H.Managoli. plff.

Vs. .

1. Province of Bombay deft.

The plaintiff hereby calla upon the defendant to produce in court the following documents which are in his custody, within 7 days of the receipt of this notice.

1. Cffice copies of the Detention Order and its grounds - No.P.S.M. 10 dated 5-2-1948 with the signature of the plaintiff taken therecn in acknowledgement of receipt.

2. Letter by Shri R.S.Deshpande, Secretary, R.S.S. Bijapur, sent on the night of 4-2-1948 regarding dissolution of R.S.S.at Bijapur, to the District Magistrate, bijapur.

3. Letter by Shri R.S.Deshpande, Secretary, R.S.S. Bijapur, sent on the night of 4-2-1948 regarding dissolution of R.S.S. at Bijapur, to the District Superintendent of Police,Bijapur.

4. Plff's representation to the District Magistrate, Bijapur, dated 9-2-1948 against the order No.P.S.M. 40 of 5-2-1948.

5. Representation of Shri R.S.Deshpande to the District Magistrate,Bijapur, dated 9-2-1948 against the order of his detention No.P.S.M. of 5-2-1948.

6. All correspondence between Shri R.S.Deshpande on the one hand and the District Magistrate,Bijapur and the Government of Bombay on the other between 5-2-1948 to 23-3-1948.

7. All the correspondence between the Plaintiff on the one hand and the District MagistrateBijapur and the Home Minister to the Government of Bombay on the other, between 5-2-48 to 4-3-48.

8. Report of other document containing information regarding the Plaintiff, received by the District Magistrate, Bijapur, before he passed the order P.S.M.40 of 5-2-1948.

Bijapur.
30-6-1950.

Sd. R.H.Managoli.
Plaintiff.

Received on 5-7-1950.

Sd. K.R.Rao.
Dist.Govt.Pleader.

In the Court of the Civil Judge, Senior Division,

At Bijapur.

vil Suit No. 258 of 1949.

1. R.H.Mangoli, pleader,
Bijapur. plff.

Vs.

Shri K.R.Rao,
Dist.Govt.Pleader,

1. The Province of
Bombay. deft.

Judgment.

This is a suit brought by the plaintiff for damages against the state of Bombay alleging that he was unlawfully detained.

2. The plaint is based on the following allegations; " The plaintiff was arrested by the Bijapur Police at about 9 A.M. on 5-2-1948 by an order passed by the District Magistrate of Bijapur and served on him the same night at about 11 P.M. the order which was No.P.S.M.40 dated 5-2-1948 purported to be under section 2(1)Cl.(a) of the Bombay Public Security Measures Act(Bom.VI of 1947) and stated that the ground of the order was that the D.M. was satisfied that the plaintiff was an active worker of R.S.S. at Bijapur and was acting in a manner prejudicial to the public safety of the inhabitants of Bijapur. The copy of the grounds supplied to him under the Act repeated almost the same fact without much further clarification ".

(b). " The plaintiff was thus in detention in the Bijapur District Prison for one month. He maintains that the grounds of the detention are totally false, and there could not have been any material on which the D.M. could be said to have been satisfied. The material if any, must have been so scantity, climsy that it could not have stood the test of independent enquiry. The D.M.failed to apply his mind to the case. He did not even care to verify that material before himself properly appreciate it. He was therefore not really and bonafide satisfied. The order and detention are

therefore without jurisdiction.The order is also otherwise invalid ".

" The plaintiff is not in a position to know who supplied that material. If it is a Govern ent servant who did it in the discharge of his duty the Govt. would be liable on that account, and if not it would be liable because it had failed, though called upon, to disclose the name of that person and has thus caused loss to the plaintiff by presenting him to seek redress against him ".

" In any case the plaintiff's detention from 9 A.M. to 11 P.M. on 5-2-1948 is totally unjustified as upto that time there was no warrant of arrest or order against him. The defendant has also caused loss to plaintiff by inordinate delay in replying to his respresentation and preventing him to seek redress in the High Court.

" It was on this respresentation that the D.M. was ultimately satisfied that the grounds of detention did not exist and hence his detention from 5-2-1948 at least was unnecessary and the D.M.'s conduct in protracting it was calloss. It was the defendant's servant and hence the defendant is liable on all or any of the grounds in paras 3 to 5".

" The plaintiff has thereby suffered physically, mentally, financially and in reputation: He lost professional income as a pleador for one whole month and was prevented from applying in time for the post of Assistant Judge, for which he was eligible in all respects ".

" He ~~is~~ therefore claims the following damage:

(i) Rs.1000/- for detention from 9 A.M. on 5-2-1948 to 4-3-1948.

(ii). Rs 200 for detention from 9A.M. to 11 P.M. on 5-2-1948.

3. The defence pleas are:-

(a) It is submitted that the plaintiff was supplied with clear, precise and accurate grounds for his detention".

" (b) The plaintiff was released under section 4 of the Bombay Public Security Measures Act as soon as such inquiries as were

necessary were made and after he had given an undertaking that he would not associate himself with the activities of the Rashtriya Swayam Sevak Sangh or any other communal or semi-military organisation which is disposed to resort to violence and preaching of communal hatred and violence".

" (c) The defendant submits that the District Magistrate's order detaining the plaintiff was a valid and bonafide order passed in exercise of the powers under section 2(1)(a) of the Bombay Public Security Measures Act delegated to him under section 21 thereof.

" (d) The defendant submits that the plaintiff is not entitled to claim any damages from the Provincial Government".

" (e) Government was not under any obligation to disclose to the plaintiff the source of information received against the plaintiff".

" (f) The allegations in paragraph 4 of the plaint that the plaintiff's detention from 9 A.M. to 11 P.M., on 5th February 1948 was unjustified is also not correct and is hereby denied".

" (g) As soon as the plaintiff's representation was received inquiries were made and the order was annulled on 4th March 1948".

" (h). The amount of damages claimed by the plaintiff is excessive".

4. The following issues were framed as preliminary issues.

1. Whether the plaint discloses a cause of action against the defendant ?

2. Whether the State of Bombay is liable ?

5. My findings on issues 1 and 2 are in the negative for the following reasons.

6. I must deal with the case as if I am deciding it on what under the old English practice was known as "Demurrer", that is, I must assume that every allegation in the plaint is true and determine the question whether the plaint discloses a cause of action against the defendant. I am not concerned herewith the defence because in considering the nature of a suit and the cause of action I am limited to the averments in the

plaint.

7. On 5th February 1948 the plaintiff who is a pleader was detained by an order of the District Magistrate, Bijapur, purporting to act under Sec. 2 of Bombay Act VI of 1947, which is an Act to consolidate and amend the law relating to public safety, maintenance of public order and the preservation of peace and tranquillity in the province of Bombay. He was released on 5-3-1948.

8. The order of the District Magistrate was in these term:(Ex.18).

" Whereas the Government of Bombay has directed by its order in the Home Department No.S.D.671 of 26-4-1947, that the powers confer ed on it by sub-section (1) of section 2 of the Bombay Public Security Measures 1947(Bombay VI of 1947), shall also be exercised by the District Magistrate;

In pursuance of section (3) of the Bombay Public Security Measures Act 1947(Bombay VI of 1947) you are informed that the grounds on which an order of detention has been made against you under clause (a) of sub section (1) of section 2 of the said Act, are:-

1. You are an active member of the Rashtriya Swayam Sevak Sangh at Bijapur which has been declared unlawful under the Criminal Law Amendment Act 1908 by Government Notification published in the Bombay Government Gazette dated 3-2-1948, and

2. Your conduct and attitude as such worker of the Rashtriya Swayam Sevak Sangh has become prejudicial to the Public safety of the inhabitants of the Bijapur city.

" You are also informed that you have a right to make a representation against the order under which you are detained. If you wish to make such a representation you should address it to the undersigned through the Supt.District Prison Bijapur as soon as possible".

8. The order releasing him read as follows:-(Ex.20)

" Whereas the Government of Bombay has directed by its order in Home Department No.S.D.671 of 26-4-1947 that the powers conferred on it by section 4 of the Bombay Public Security Measures Act 1947 shall also be exercised by the District Magistrates;

And whereas I, A.S.Naik, Esqr., I.C.S., District Magistrate Bijapur, am satisfied, from the enquiries made through the D.S.P. Bijapur and from the written under-taking given by the person known as Ramarao Hanmantrao Mangoli of Bijapur on 3-3-1948 who has been detained under section 2(1)(a) of the Public Security Measures

in the Bijapur District Prison by my order No. P.S.M.40 dated 5-2-1948, that he is not likely to take part in or associate himself with the activities of the Rashtriya Swayam Sevak Sangh Organization or any other communal and semi-military organisation, disposed to resort to violence and preaching communal hatred and violence and that his release will not be prejudicial to the public safety, the maintenance of public order or the tranquillity of Bijapur.

Now, therefore, in exercise of the powers conferred by section 4 of the said Act, I hereby direct that my order of detention passed under my No.P.S.M.40 of 5-2-1948 be annulled and the said person Ramarao Hanmantarao Mangoli of Bijapur be released".

9. The matter falls within the following portion of section 2 of Bombay Act No.VI of 1947;

" The Provincial Government may, if it is satisfied that any person is acting in a manner prejudicial to the public safety, the maintenance of public order, or the tranquillity of the Province or any part thereof, make an order directing that he be detained ".

10. Section 24 imposes a bar to legal proceedings. It states that:

" No suit, prosecution or other legal proceedings whatsoever shall lie against any person for or on account of or in respect of any sentence passed or any act ordered or done by him in good faith whether in exercise of any jurisdiction or power conferred or purporting to have been conferred on him by or under this Act or in carrying out any sentence passed by a Special Judge in exercise of any jurisdiction as aforesaid".

11. Now it is an indisputable fact that some restrictions on civil liberties are necessary for the purpose of maintaining or restoring order in a Province. For examples the American constitution forbids the Congress to abridge and curtail civil liberties. But in practice the Congress does put restrictions

on the exercise of civilliberties and such restrictions ~~xxxxxx~~ ~~xxxxxxx~~ are held valid by the Supreme Court of America. The Supreme Court of America has come to the rescue of the Congress by inventing the doctrine of " Police Power". " Polic Power " is the right of the State Legislature to take such action as it saw fit in ~~x~~furtherance of the security, morality, and general welfare of the community, save only as it was prevented from exercising its directions by the very specific restrictions in the written constitution.

12. As stated already, the plaintiff was detained by an order of the District Magistrate on 5-2-1948 under section 2 of the law relating to public safety, maintenance of public order and the preservation of peace and tranquillity in the Province of Bombay. It is enough to indicate that Mahatma Gandi was assassinated on 30th January 1948 with the result that there were disturbances and the disturbances were at their height in certain districts of the Bombay Presidency. District Magistrates in furtherance of the security and for the purpose of maintaining and restoring order were/called upon to put restrictions on the exercise of civil in consequence liberties. The District Magistrte, Bijapur apparently took such action as he saw fit in furtherance of the security of the district.

13. It is against this background of extensive violence and the duty imposed upon the District Magistrate Bijapur to maintain and restore order in the district that I must consider the question of good faith or bad Faith.

14. In order to succeed in an action against the District Magistrate, the plaintiff must prove that he acted maliciously, namely, from some indirect motive. There is no allegation in the plaint that the District Magistrte Mr.A.S.Naik, I.C.S., did not act in good faith. It is not alleged that Mr.Naik had a personal grudge against the plaintiff. As I said, the plaint omits all references to mal fides on the part of Mr.Naik, District Magistrate, Bijapur, as he then was and rightly so. Indeed it is difficult to imagine a more absured suggestion and the plaintiff very properly has not alleged in his plaint that Mr.Naik acted in bad faith.

15. When no question of bad faith enters into consideration, section 24 of Bombay Act VI of 1947 is a bar to legal proceedings. The bar is absolute in the absence of an allegation that the District Magistrate acted in bad faith. There is, therefore, a fundamental obstacle in section 24 which cuts at the root of the Court's jurisdiction.

16. While I am on the point of bona-fides, one must remember that Bose J. in I.L.R.Nag.(1949) put the case thus at page 571:-

" It is not always possible to legalise actions which are not permissible under the normal law of the land, ahead of time, nor could an emergency be adequately met if those burdened with the responsibility of maintaining law and order were obliged to consult a legal library every time they made an order or directed an operation. You cannot quell a howling mob or put down smouldering insurrection holding a law lexicon in one hand and a rifle in the other. A wide discretion has to be left to the man on the spot in such cases, but it would be impossible to get officers to act with the necessary initiative and resource unless they are confident that they will be protected and safe-guarded even if they do happen to overstep the law.".

17. Now it is true that his Lordship said that in connection with Acts of indemnity soon after an unheaval. In my opinion the criterion is helpful in this case and is decisive as to the question of bona-fides. The test is to see that an emergency cannot be adequately met if those burdened with the responsibility of maintaining law and order were obliged to consult a legal library every time they made an order. Undoubtedly, they were disturbances and it became necessary to deal with the situation due also to extensive violence.

18. As I said, a wide discretion has to be left to the man on the spot in such cases. It is for this reason that the District Magistrate requires special protection and the Legislature has given effect to such a policy under section 24 of the Act.

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served on him on the evening of 5th February 1948 while he was, as a matter of fact, arrested by the Police at 9 A.M. Under section 51 of the Bombay District Police Act 1890 every Police Officer can apprehend all persons when he is legally authorised to apprehend and for whose apprehensionthere is sufficient reason. Under section 80 the suit should be instituted within six months after the date of the act complained of. Assuming, therefore, that the Police Officer is liable the suit is clearly time-barred. There is no allegation that he acted in bad faith. He acted under powers conferred on him by the legislature for the purpose of maintaining order. Hence he is also protected in such a case. The Provincial Government is also protected.

24. For these reasons my finding is there is no cause of action against the Provincial Government. In the result the plaint is rejected under Order 7, rule 11(a) C.P.C. The plaintiff to pay the defendant's costs.

" True Copy" 26-9-1950.

Sd. A.C.Sequeira.
Civil Judge, Senior Division.

Dist. Govt. Pleader, Bijapur.

it in discharge of their duties as such servant and hence the defendant is liable on all or any of the grounds in paragraphs 4 to 6.

7. The plaintiff has thereby suffered physically, mentally, financially and in reputation. He lost professional income and is liable for each month and the ensuing from April 1940 in addition for the post of Assistant Judge, for which he was eligible in all respects.

8. He is therefore claiming the following damages:-

1. Rs. 1000/- for detention from 9 A.M. on 5-3-1940 to 4-3-1940, alternatively
2. Rs. 200/- for detention from 9 A.M. to 11 A.M. on 5-3-1940.

9. The cause of action arose on 5-3-1940 and continued upto 4-5-1940.

10. The valuation of this suit for court fee, jurisdiction and pleader's fees is Rs. 1000/-.

11. The cause of action and the damages incurred were within the jurisdiction of this Court.

12. The notice required by Section 80 C.P.C. has been duly served on the defendant and the other formalities have been complied with.

13. The last date for filing the suit was on 4-5-1940 and this Court having been closed from 4-5-40 to 29-5-1940, the suit filed today is in time.

14. The plaintiff prays for a decree that the defendant be ordered to pay the plaintiff Rs. 1000/- with cost and future interest.

This suit coming before Shri. A.C. Sequeira Civil Judge, Sr.Dn., this day the 26th of September 1950, in the presence of Shri. M.M.Mangu acoli pleader for the plaintiff and Shri- K.K.Rao pleader for the defendant, it is hereby ordered and decreed that ,

"For these reasons my finding is there is no cause of action against the Provincial Government. In the result the plaint is rejected under Or.7,rule 11(c) C.P.C. plaintiff to pay the defendant's costs.

Bill of Costs.

For Plff.		..for Deft.	
1. For Court fee stamps.	Rs. 93-12-0		
2. " Vakalat	0-10-0	1. leader's fees.	Rs. 60- 0-0
3. "applications Exh. 3,4, and 12.	1-14-0	2. Duplicate " for exhs. 6,7 and 16.	1-14-0
4. " process	1- 8-0		
5. " pleader's fees	60- 0-0		Rs. 61-14-0
	Rs. 157-12-0	Disallowed costs for exhs. 6, , and 16.	1-14-0
Disallowed costs. for exhs. 3,4 and 12.	1-14-0		Rs. 60-0-0.
	Rs. 155-14-0		

Given under my hand and seal of the Court this day the 26th day of September,1950.

Sd/- V.V.R.Patel
Clerk.

Sd/- A.C.Sequeira
Civil Judge, Sr.Dn.,
Dijagur.

"True Copy"

Dijagur

43-4

Suits:
Bijapur.
For damages of Rs.1,000 for detention from 5th February 1948 to 4th March 1948 under the Bombay Public Security Measures Act, 1947, or in the alternative Rs.200 as damages for detention from 9 a.m. to 11 p.m. on 5th February 1948.

GOVERNMENT OF BOMBAY,
Legal Department,
Resolution No. 15783
Bombay Castle, 13th November 1950.

Read Government Resolution, Legal Department No. 66 dated the 4th January 1950.

Endorsement from the District Government Pleader, Bijapur No.665 dated the 29th September 1950.—Forwarding an uncertified copy of judgment and stating that the suit noted in the margin was decided by the Civil Judge S.D. Bijapur on 26th September 1950, when the following order was passed :-

In the Court of the Civil Judge (Senior Division) Bijapur.
Civil Suit No. 258 of 1949.

Ramchandra Hanmanta Mangoli ... Plaintiff.
versus.
The Province of Bombay ... Defendant.

" The plaint is rejected under order 7 Rule 11(a) C.P.C.
The plaintiff to pay the defendant's costs."

RESOLUTION :- The result of the suit is recorded.

By order of the Governor of Bombay,

original

E. P. Bhamgara,
Assistant Secretary to Government.

Submitted for signature
M. 6/4

To
The Home Department,
The Collector of Bijapur,
The District Government Pleader, Bijapur.

A.A.S.
Kup.
4/11.

Issued
13/11